

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

JASON WALLER

Petitioner

vs.

Case No. 3:15-cv-310

TERRY TIBBALS, Warden
London Correctional Inst,

JUDGE THOMAS M. ROSE

Respondent

**ENTRY AND ORDER OVERRULING OBJECTIONS (DOC. 25 AND 32) ADOPTING
REPORT AND RECOMMENDATIONS (DOC. 22) AND SUPPLEMENTAL REPORT AND
RECOMMENDATIONS (DOC. 27) DENYING PLAINTIFF'S GROUNDS FOR RELIEF
AND DISMISSING PETITIONER'S PETITION, DENYING PETITIONER'S
REQUESTED CERTIFICATE OF APPEALABILITY ON BOTH GROUNDS,
TERMINATING SAID CASE ON THE COURT'S DOCKET**

This matter comes before the Court pursuant to the Petitioner's Objections (Doc. 25 and 32) to the Magistrate Judge's Report and Recommendations (Doc. 22) and Supplemental Report and Recommendations (Doc. 27).

The Court has reviewed the comprehensive findings of the Magistrate Judge in both his original Report and Recommendations (Doc. 22) and his Supplemental Report and Recommendations (Doc. 27) as well as the Petitioner's Objections (Doc. 25 and 32). Pursuant to 28 U.S.C. Section 636(b) and Fed. R. Civ. P. 72(b) this District Judge has made a *de novo* review of the record in this case and upon consideration of the foregoing, the Court finds the Objections (Doc. 25 and 32) are not well taken and hereby OVERRULED.

Petitioner's attorney's failure to preserve the jury instruction issue was apparent on the record. Although Petitioner was able to raise this claim of ineffective assistance of trial counsel in a petition for post-conviction relief under Ohio Revised Code Section 2952.21, he made no claim that counsel was ineffective in failing to object to the jury instructions, nor did he appeal when his trial court denied his post-conviction petition and therefore forfeited this claim for ineffective assistance of trial counsel as an excusing cause at this point.

Accordingly, the Magistrate Judge's Report and Recommendations (Doc. 22) and Supplemental Report and Recommendations (Doc. 27) are ADOPTED in their entirety.

It is ORDERED and ADJUDGED that the Petitioner's Petition is DISMISSED WITH PREJUDICE. Because reasonable jurists would not disagree with this conclusion, Petitioner should be denied a certificate of appealability and the Court should certify to the Sixth Circuit that any appeal would be objectively frivolous and therefore should not be permitted to proceed in forma pauperis. This matter is ORDERED terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division at Dayton.

IT IS SO ORDERED.

January 19, 2017

*s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE